

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CARLOS A. BERMUDEZ,

Plaintiff,

v.

U.S. BANK NATIONAL
ASSOCIATION as LEGAL TITLE
TRUSTEE for TRUMAN 2016 SC6
TITLE TRUST and FAY SERVICING,
LLC,

Defendants.

Case No.

1:18-cv-05018-SCJ-AJB

U.S. BANK’S MOTION TO REMAND

COMES NOW, U.S. Bank National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust (“U.S. Bank”), and files this Motion to Remand, respectfully showing this Honorable Court as follows:

1. On October 31, 2018, U.S. Bank and co-defendant Fay Servicing, LLC *properly* removed a pending lawsuit filed by Plaintiff Carlos Bermudez from the Gwinnett County Superior Court based on federal question jurisdiction. *See* [Doc. 1]. A Motion to Dismiss is pending. [Doc. 5].

2. On December 21, 2018, the Plaintiff filed a document titled “Notice of Removal.” [Doc. 9]. This document purports to remove a pending dispossessory action to this Court from the Gwinnett County Magistrate Court. *Id.* Although not entirely clear, the Plaintiff appears to claim that this Court has federal question jurisdiction because it is related to the above-styled matter. *Id.* at p. 2, ¶ 6.

3. The Notice of Removal is improper and should not be deemed an effective removal of the dispossessory case. This is because “[a] case cannot be removed from state court to become part of an already existing federal case.” *Iqbal v. Afzal*, No. 09-2528 SC, 2010 WL 934065, at *2 (N.D. Cal. March 15, 2010) (quoting *Gilliam v. Austin*, No. 02-1389, 2002 WL 1034115, at *4 (N.D. Cal. May 13, 2002)); see also *Paralee Boyd Salon, LLC v. COG Studio, LLC*, No. 16-13375, 2016 WL 5388911, at *1 (E.D. Mich. Sept. 27, 2016) (collecting cases). Additionally, such an attempt at removal circumvents the requirement that a filing fee be paid in all removed actions. *Paralee Boyd Salon*, 2016 WL 5388911, at *1 (citing 28 U.S.C. § 1914(a)). Based on these defects, the dispossessory case must be remanded to the Gwinnett County Superior Court.

4. In addition to the procedural defects, this Court also lacks subject matter jurisdiction over the dispossessory case. First, a dispossessory action arises solely under state law, so no federal question is present. *Kenridge Assocs., LLC v.*

Miles, No. 1:18-CV-00722-CAP-JFK, 2018 WL 1895530, at *2 (N.D. Ga. Feb. 22, 2018) (citations omitted). As for diversity jurisdiction, a case seeking only possession of real property does not satisfy the requirements for diversity jurisdiction because “[a] claim seeking ejectment in a dispossessory action cannot be reduced to a monetary sum for purposes of determining the amount in controversy.” *U.S. Bank Nat’l. Ass’n v. Stewart*, No. 1:10-CV-2602-RWS-LTW, 2010 WL 5885895, at *2 (N.D. Ga. Dec. 14, 2010), *report and recommendation adopted*, 2011 WL 765948 (N.D. Ga. Jan. 16, 2011) (collecting cases).

5. In addition to failing to meet the basic amount-in-controversy requirement, the Plaintiff also cannot remove the dispossessory action because he is a citizen of Georgia. A defendant who is a citizen of the forum state may not remove a case on diversity grounds. *Murphy v. Aventis Pasteur, Inc.*, 270 F. Supp. 2d 1368, 1374 (N.D. Ga. 2003) (citing 28 U.S.C. § 1441(b)). Thus, this Court lacks subject matter jurisdiction over the dispossessory action and it must be remanded.

WHEREFORE, U.S. Bank prays for the following relief:

- a) That this Court remand the dispossessory action to the Gwinnett County Magistrate Court; and
- b) For any other relief that this Court deems just and proper.

Respectfully submitted, this 31st day of December, 2018.

/s/ Bret J. Chaness

BRET J. CHANESS (GA Bar No. 720572)

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FONT CERTIFICATION

The undersigned counsel hereby certifies that the within and foregoing was prepared using Times New Roman, 14-point font in accordance with LR 5.1(B).

This 31st day of December, 2018.

/s/ Bret J. Chaness

BRET J. CHANESS (GA Bar No. 720572)

CERTIFICATE OF SERVICE

I hereby certify that I have, this 31st day of December, 2018, caused a true and correct copy of the within and foregoing to be served via U.S. First Class mail to the following:

Carlos A. Bermudez
1940 Marina Way
Buford, GA 30518

/s/ Bret J. Chaness
BRET J. CHANESS (GA Bar No. 720572)